

Rec #66085  
8/08/05

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

EDWARD R. NOYES, Jr.  
Plaintiff

V.

SUN LIFE ASSURANCE  
COMPANY OF CANADA,  
and SUN LIFE FINANCIAL,  
Defendant

CIVIL COMPLAINT  
NO.

05 - 11 40 NG

MAGISTRATE JUDGE Alexander

NAMES and ADDRESSES:

**Plaintiff:**

Edward R. Noyes, Jr.  
197 Hilldale Ave.  
Haverhill, Mass. 01830  
tel:(978)835-8333

**Defendant(s):**

Sun Life Assurance Company of Canada  
SC 3208  
One Sun Life Executive Park  
Wellesley, Massachusetts 02481-5699  
Tel no. 1-800247-6875

### **JURISDICTION**

The Plaintiff, Edward R. Noyes, pro-se brings forward this Civil Complaint pursuant to the Employee Retirement Income security Act of 1974, (ERISA), this Federal Court has complete and only Jurisdiction for this Civil Complaint to recover Disability income that the Plaintiff has been deprived of since October of 2003.

### **COMPLAINT**

The Defendant Denied the Plaintiff's application for Total Disability income on September 4, 2004, knowing that the Plaintiff was "totally disabled," reason being that the Plaintiff's Job was considered "light duty," this job description totally contradicted the Plaintiff's Employer, Joseph P. Keefe Technical School, who had contracted the Defendant to insure all their employees without a job description prior to entering a contract, the Defendant required the Plaintiff's Employer to complete a "Statement of Fact," which included a complete job description, the Defendant's denial was based upon te Defendant manufacturing false and misleading data which they refused to substantiate. The Defendant Denied the Plaintiff's Appeal, said Denial dated May 10, 2005, again based upon the same reason, "light duty," refusing to produce the reference and/or publication in determining the Plaintiff's job as light duty," and despite their own hired surgeon who declared the Plaintiff as "totally disabled."

### **BACKGROUND**

The Plaintiff was under contract with South Middlesex Regional Vocational Technical school located at 750 Winter Street, Framingham, Massachusetts, 01702 as a Plumbing Teacher since June 29, 1988. His record was unimpeachable as a instructor for the School, the Plaintiff had ben diagnosed with Diabetes in 1986. The Plaintiff suffered a heart attack in 1996, was out on sick leave for approximately three (3) months. The Plaintiff sadly started to suffer more health issues in the early 2001-2003, severe back pain, diabetes was out of control, complications with his heart, such as clogging, since the time of his diabetes being diagnosed, to the present today, the Plaintiff has always been treated at the Lahey Clinic by a number of doctors. In August of 2003, the Plaintiff was suffering from a number of complications regarding cardiovascular issues diabetes out of control, and severe back pain, being not able to stand for extended periods of time, bend or lift any substantial weight, he was directed by his primary care physician, Dr.Clerkin, supported by his cardiologist, Dr. Bruce Mirbach, his neuro-surgeon, Dr. Sparacio, to immediately “**stop**” working, and to out on disability for the foreseeable future, this time-frame was between August of 2003 and October of 2003. The Plaintiff was ordered to undergo therapy regarding the back pain, and he was being closely being monitored by his Doctors for cardiovascular and diabetes issues. After being examined by his new Primary Care Physician, Dr. Thomas A. Fry, in May of 2004, the Plaintiff was informed that his working days were over, and that he was totally disabled, and this was affirmed by his Cardiologist,

Dr. Mirbach in July of 2004 after he completed a number of tests, and declared the Plaintiff **“totally disabled.”**

### **STATEMENT OF FACTS**

1. All parties agree that the Plaintiff is disabled.
2. All parties agree that the Plaintiff has been unable to work since October 1, 2003, meeting the required time frame established by the Defendant to receive Disability income, which is 60% of his last contracted salary at the time the Plaintiff went out on disability leave.
3. The defendant contracted outside medical consultants to incorporate into their Review, neither of three medical consultants ask to examine the Plaintiff in person, This being Drs. W. Wallace Watson, James L. Sarni, and Seth Lewin, all three agree That the Plaintiff could no longer lift more than ten (10) pounds, occasionally 20 Pounds, even one of their own doctors, Dr. Sarni that the Plaintiff is definitely restricted and can no longer perform as a plumbing instructor.
4. The Defendant denied the Plaintiff's application for Disability, said notice dated September 4, 2004 by knowingly manufacturing a false and misleading “job Description, stating that the Plaintiff could lift up to ten pounds, occasionally 20 pounds, could sit down up to three hours a day, considered the job as “light duty,” Totally contradicting the “job description” submitted by the Plaintiff's employer, Joseph P. Keefe Technical School, Leslie Lesperance, business manager, where part of the “job description,” must lift 50 pounds or more occasionally, must stand all

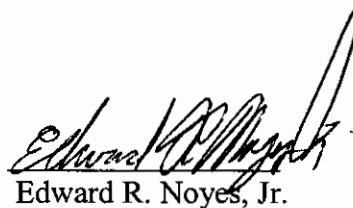
day for only a thirty (30) minute respite, constant bending, turning, and crawling, all functions of the Plaintiff's job that he can no longer perform.

5. The Plaintiff timely filed his Appeal, said Appeal was accepted and docketed On November 10, 2004.
6. In January of 2005, the Defendant requested that the Plaintiff be examined by two doctors of their choice, the Plaintiff agreed without hesitation, he had no problem being examined by any doctor, said examinations were completed by Drs. Friedman and Mansfield
7. Dr. Mansfield, a highly respected surgeon issued his report dated January 19, 2005 And a follow-up dated February 20, 2005 that the Plaintiff was totally disabled, and even with back surgery, it is highly unlikely that the Plaintiff could ever return to his job as a plumbing instructor.
8. The defendant contracted Robert Violetta, a rehabilitation case consultant who submitted a report dated May 2, 2005 that a plumbing instructor is not a plumbing job, totally defying common sense.
9. The defendant denied the appeal dated May 10, 2005, reasons for: job is considered light duty, defying all job descriptions established by State Educational Boards.
10. Despite numerous attempts by the Plaintiff, the Defendant through their authorized agent, Brian Sullivan, Appeals analyst, "refused" to produce a copy of the "occupational job analysis" claimed to be used by the Defendant in describing the Plaintiff's job as "light duty."

**RELIEF SOUGHT BY THE PLAINTIFF**

1. **That this Honorable Court state that the Plaintiff is Totally Disabled,  
And that he qualifies for total disability income.**
2. **That the Defendant be Ordered to start paying the Plaintiff 60% of his last  
contracted salary, which would amount to some \$36,000.00 per year, to be  
divided equally over 12 months, commencing forthwith from this Court's Order.**
3. **That the Defendant be Ordered to pay in one lump sum, the disability income  
Retroactive back to October 1, 2004, plus prejudgment interest at the rate of  
18% or whatever this Honorable Court deems fair and just. At the time of this  
Court's Order.**

Signed under the pains and penalties of Perjury this 12<sup>th</sup>, of  
July, 2005.

  
Edward R. Noyes, Jr.



**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

EDWARD NOYES, Jr.  
197 HILLDALE AVE.  
HAVERHILL, MASS. 01830

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Essex  
(EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS**

SUN LIFE ASSURANCE COMPANY OF CANADA  
ONE SUN LIFE EXECUTIVE PARK  
WELLESLEY HILLS, MA. 02481-5699

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Middlesex  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

pro-se

05-11640 NG  
ORNEYS (IF KNOWN)  
n/a

**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only) (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                                 | DEF                      |   | PTF                      | DEF                                 |
|---|-------------------------------------|--------------------------|---|--------------------------|-------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Citizen of Another State                | <input type="checkbox"/>            | <input type="checkbox"/> | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> | <input type="checkbox"/>            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/>            | <input type="checkbox"/> | Foreign Nation  | <input type="checkbox"/> | <input type="checkbox"/>            |

**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**V. NATURE OF SUIT**

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7809	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions

REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition

**VI. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

The Plaintiff brings this civil complaint for disability pension pursuant to Employee Retirement Income Security Act of 1974 (ERISA)

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

est. \$380,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ YES ☒ NO

**VIII. RELATED CASE(S)** (See instructions):

IF ANY none

JUDGE

DOCKET NUMBER

DATE 7/17/05 SIGNATURE OF ATTORNEY OF RECORD

Edward R. Noyes, Jr. pro-se

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Edward Noyes, Jr. v. Sun Life assurance Company of Canada.
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- |             |      |  |  |
|-------------|------|--|--|
| <u>    </u> | I.   | 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.   |  |
| <u>XX</u>   | II.  | 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.          | *Also complete AO 120 or AO 121 for patent, trademark or copyright cases |
| <u>    </u> | III. | 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 365, 370, 371, 380, 385, 450, 891. |  |
| <u>    </u> | IV.  | 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.                                |  |
| <u>    </u> | V.   | 150, 152, 153.   |  |
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.  
none
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
- YES                      NO XX
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)
- YES                      NO XX
- IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?
- YES                      NO XX
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?
- YES                      NO XX
7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).
- YES XX                      NO
- A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?
- |                         |                  |                  |
|-------------------------|------------------|------------------|
| <u>EASTERN DIVISION</u> | CENTRAL DIVISION | WESTERN DIVISION |
|-------------------------|------------------|------------------|
- B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?
- |                  |                  |                  |
|------------------|------------------|------------------|
| EASTERN DIVISION | CENTRAL DIVISION | WESTERN DIVISION |
|------------------|------------------|------------------|
- (PLEASE TYPE OR PRINT)
- ATTORNEY'S NAME Edward Noyes, Jr.
- ADDRESS 197 Hilldale Ave., Haverhill, Mass. 01830
- TELEPHONE NO. (978)835-8333